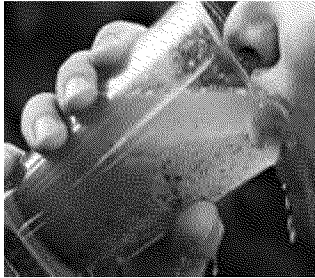


From: Morgan, Jeanette
Sent: Wed 8/12/2015 7:15:30 PM
Subject: FW: Water Law News for August 12, 2015



Water Law News

for August 12, 2015

Bloomberg BNA Daily Environment Report™

Oil & Gas

Potential Seen for 4,000 Fracked Wells in Delaware Basin

As many as 4,000 wells could use hydraulic fracturing in the Delaware River Basin to access natural gas in the Marcellus Shale if a moratorium on drilling in the area is lifted, according to a report released Aug. 11 by CNA, a nonprofit research...

Science Policy

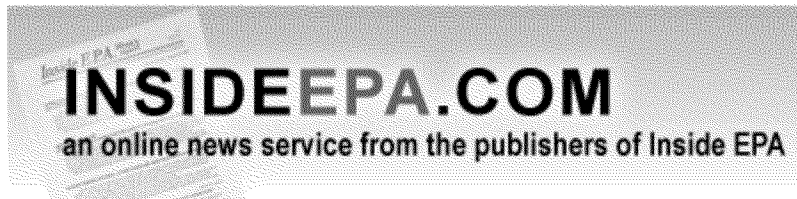
Bill Report Tells EPA to Suspend Advisers' Activities

All reviews conducted by the Environmental Protection Agency's Science Advisory Board would have to be suspended under language included in the House report accompanying the agency's fiscal year 2016 appropriations....

Water Pollution

No Reports of Human Harm From Colorado Mine Spill

Environmental Protection Agency Administrator Gina McCarthy called the massive release of toxic mining waste into a southwest Colorado river a "tragic and very unfortunate incident," but said Aug. 11 the agency is "working..."



Latest News

EPA Urges Court To Reject Rehearing Bid In Suit Over CWA Testing Memos

EPA is urging a federal district court to deny wastewater utilities' bid to rehear a ruling rejecting the utilities' request for judicial review of agency memos that allegedly mandated strict new testing procedures for Clean Water Act (CWA) permits, claiming the utilities have not met the procedural burden of proving rehearing is warranted.

Final EPA Water Quality Rule Clarifies Provisions But Rejects Major Changes

EPA's newly finalized rule governing state water quality standards (WQS) appears to meet state groups' requests for greater clarity and flexibility in the rule's provisions, while rejecting calls from industry and environmentalists to either scale back or expand the policy's scope despite the groups' warnings of legal threats to force the changes.

News Briefs

Senator Seeks Stay Of 'High-Impact' EPA Rules Pending Suits

Sen. Dan Coats (R-IN) is pushing a new bill that would automatically stay EPA and other agencies implementing "high-impact rules" if legal challenges to the regulations are pending, which could affect a host of EPA policies such as its power plant greenhouse gas (GHG) standards and Clean Water Act (CWA) jurisdiction rule.

EPA IG To Audit Annual Review Of Clean Water SRF

EPA's Office of Inspector General (OIG) will audit EPA's annual review of agency's clean water state revolving loan fund (SRF) to determine whether states are complying with their yearly grant agreements, while the agency separately works to find ways for states to sustain their SRF programs at a time of reduced federal funding.

EPA:

Red flags ahead of 'Ice Queen's' tumultuous reign

Robin Bravender and Kevin Bogardus, E&E reporters

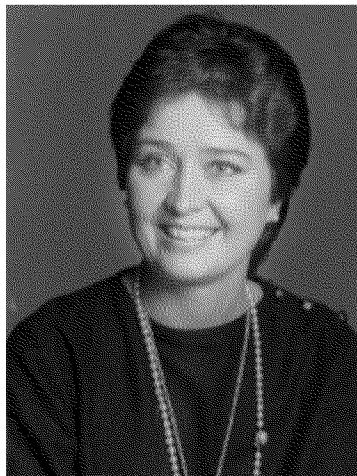
Published: Tuesday, August 11, 2015

At U.S. EPA, Anne Burford was known as the "Ice Queen."

Before that, she was known for being stubbornly inflexible about her political views, alienating people and being consistently late to work.

But none of it stopped the Reagan administration from hiring her to be EPA's boss in 1981.

Burford, who died of cancer in 2004 at age 62, is perhaps the most polarizing figure in EPA's history. She slashed her agency's budget, was cited for contempt of Congress after refusing to hand over toxic waste records and ultimately resigned after less than two years on the job.



President Reagan's first EPA boss was a polarizing figure who resigned after two years on the job. Photo courtesy U.S. EPA.

As federal investigators were vetting her for the post in 1981, former colleagues and associates raised concerns that could have served as red flags for the administration, according to FBI records obtained by *Greenwire* under the Freedom of Information Act.

James Florio, a former New Jersey governor and Democratic congressman who authored the Superfund law and investigated Burford's EPA leadership, said in a recent interview that concerns raised in the FBI report suggest Congress didn't do its due diligence in vetting the EPA boss.

"She was stubborn, she was very fixated on her views and didn't tolerate a lot of opposition," Florio said.

Several people who knew Burford professionally told federal officials they wouldn't recommend her for a top government job, according to the FBI report.

When Burford was assistant district attorney in Jefferson County, Colo., from 1968 to 1971, she would often arrive late for court appointments and failed to show up at all for scheduled appearances near the end of her time on the job, a clerk in a Colorado court told investigators. Burford would "frequently lie to her," the clerk said, "telling her she would make a scheduled appearance and then not show up," according to the FBI report.

Another person who worked with Burford in the Jefferson County office heard that citizens and judges had complained about her professional conduct. The interviewee said that the district attorney had instructed him to fire Burford and that he had tried for two days to track her down to discuss the complaints. When her co-worker finally spoke to her, Burford told him she had gotten a new job.

She went on to be Denver's deputy district attorney from 1971 to 1973.

An attorney who took over her post in the Denver office in 1973 said it appeared Burford had abandoned her duties after her boss was voted out of office and she hadn't been asked to stay on. He told investigators "the mail had not been answered and numerous cases" had been paused "for no legitimate reason" until he took over.

At EPA, the former chief was known to keep irregular hours.

She would often arrive at work at 10 or 11 a.m., "if that early," an adversary told *The Washington Post* in a 1983 story. "Sometimes she wouldn't come in until noon and then go right to lunch," that person said.

However, one of her supporters told the newspaper that Burford would often work late into the night, sometimes calling her staff at home as late as midnight to talk about work.

'Perceptive and tough-minded'

Despite her reputation as an "Ice Queen," Burford had plenty of friends and political allies.

She was sponsored for the EPA job by Reagan's Interior Secretary James Watt and Colorado brewing magnate Joseph Coors, *The New York Times* reported.

The FBI report shows that dozens of people interviewed -- including former supervisors, co-workers, neighbors and friends -- lauded the nominee's character and reputation. They described her as "honest, trustworthy, discreet, reliable, competent, hardworking, very intelligent, very perceptive and tough-minded."

Still, she was widely seen as a complicated character.

"It would take a very long time to explain the complexities of that woman," a former Colorado state legislator told the *Post* in 1983. "She is bright and tough-minded, but hypocritical. Personable, yet Machiavellian."

Gerald Kopel, a Democrat who had worked across the aisle from Burford in the Colorado General Assembly, told investigators he found her to be "very strong willed" and, "at times, somewhat inflexible." He observed that "once she has made up her mind on a matter she will stubbornly hold to her position without any spirit of compromise or cooperativeness."

Kopel did, however, recommend her for the federal government post, saying he believed she would overcome her "stubbornness" in "a job of high trust and responsibility with the U.S. government."

'She occasionally alienates some people'

One person interviewed during her 1981 vetting was Robert Burford, with whom she had served in the Colorado House of Representatives. He had been designated to lead the Bureau of Land Management for the Reagan administration.

The EPA nominee (who was Anne Gorsuch at the time) "is not afraid to stand on popular or unpopular issues. The appointee gets along very well with others, but, because of her strong stands on certain issues she occasionally alienates some people," Burford said.

Gorsuch and Burford would marry two years later, as the EPA chief was locked in a heated battle with Congress over Superfund enforcement and a month before she resigned from the post. The couple celebrated their nuptials with a 400-person party at the Four Seasons Hotel in Washington's Georgetown.

Burford had separated from her previous husband, attorney David Gorsuch, in August 1980, one of her friends told investigators in March 1981. The friend, who had known the EPA nominee since they were both in law school at the University of Colorado, said she was aware of rumors that she had been romantically involved with Burford.

The friend "talked to appointee about such claims and appointee told her frankly that there was no such relationship at all," the report says. Burford had told her "she had been a co-worker with [Robert] Burford in matters involving the so-called Sage Brush Rebellion and that their relationship was strictly professional."

The movement sparked in the 1970s sought to wrest control of public lands in the West and put it in the hands of state and local authorities.

Some critics of the Reagan administration's environmental policies said traits like stubbornness and inflexibility were what the White House wanted in an EPA chief.

"A certain person would be happy to aggressively attack environmental protections," said EPA employee Hugh Kaufman, a whistleblower who leaked agency Superfund documents to Congress while Burford was refusing to comply with requests from congressional investigators.

"That's exactly what they were looking for," he said.

WATER POLICY:

13 states join chorus asking courts to put WOTUS on hold

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, August 11, 2015

Thirteen states yesterday asked a federal judge to block U.S. EPA's major Clean Water Act jurisdiction rule from going into effect later this month.

Led by North Dakota, the states have requested that a federal judge issue a preliminary injunction against the Waters of the U.S. rule before its Aug. 28 implementation date.

The Obama administration rule will expand the number of streams and wetlands that automatically qualify for federal Clean Water Act protections.

It has been largely applauded by environmental groups, but more than 25 states have filed a flood of lawsuits seeking to block it, largely claiming that it is an unconstitutional federal power grab that infringes on their states' rights.

"The rule is perhaps the most controversial and widely objectionable rule that would usurp state and local control over vast reaches of water in North Dakota and across the nation," North Dakota Attorney General Wayne Stenehjem (R) said in a statement.

North Dakota's lawsuit is joined by Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota and Wyoming, as well as New Mexico's environmental agencies. It was filed in federal district court in southeast North Dakota. The states also asked for an oral argument to be scheduled on the injunction question the week of Aug. 24.

A separate lawsuit from 11 other states was filed in federal court in Georgia. That court will hold a hearing tomorrow on whether to grant an injunction against the rule, with a ruling coming as soon as later this week.

In either case, the bar for a court to grant a stay of a regulation while the litigation plays out is high. The challengers must show that they will suffer irreparable harm if the regulations are not put on hold and that it's likely that their arguments will ultimately succeed in court.

The lawsuits are two of several challenges filed against the water proposal. Several industry and farming groups have also gone to court, as have environmentalists who claim the rule should be more far-reaching.

Most of those cases are on hold at this point, however, as the court system is in the process of merging them into one case and determining the best court to review the consolidated litigation.

The injunction motions are the earliest opportunities for the states to block the rule, which is an effort by EPA to clarify the Clean Water Act's jurisdiction after two muddled decisions from the Supreme Court.

[Click here](#) for the injunction motion.

EPA:

Former White House staffer signs on as McCarthy speechwriter

Robin Bravender, E&E reporter

Published: Tuesday, August 11, 2015

U.S. EPA Administrator Gina McCarthy has a new top speechwriter.

Becky Fried returned to the agency last month as director of speechwriting after four years working at the White House's science shop. She spent the early years of the Obama administration in communications jobs at EPA.

PEOPLE

In her new post, Fried directs and oversees all speechwriting for McCarthy. She's replacing Kevin Samy, who had the post for two years before taking a job as a speechwriter at the Defense Department, according to his LinkedIn profile.



Gina McCarthy's new chief speechwriter, Becky Fried, is returning to EPA after a stint at the White House. Photo courtesy of LinkedIn.

Fried spent four years working in communications in the White House Office of Science and Technology Policy, where she was the top speechwriter for President Obama's science adviser, John Holdren. She also helped lead the rollouts of the White House's climate announcements and managed the science office's social media efforts.

Before joining the White House in early 2012, Fried was a special assistant to EPA's former science adviser Paul Anastas. She provided public outreach support in the Gulf of Mexico during the Deepwater Horizon oil spill and served on EPA's emergency operations team during Japan's Fukushima Daiichi nuclear incident, according to EPA.

Fried has a bachelor's degree in environmental policy from Barnard College and two master's degrees from Columbia University in journalism and earth and environmental sciences.

CAMPAIGN 2016:

Nursing unions back Sanders for opposing Keystone XL

Hannah Northey, E&E reporter

Published: Tuesday, August 11, 2015

The nation's largest group of unionized nurses yesterday endorsed independent Sen. Bernie Sanders of Vermont for president for his vocal opposition to the Keystone XL pipeline, rejecting former Secretary of State Hillary Clinton for her silence on the project's fate.

"I think Keystone symbolizes our concern that we should have a stronger stance on climate change," Charles Idelson, a spokesman for National Nurses United, said in an interview. "Clinton hasn't taken a position on Keystone."

Idelson said energy issues play into the agenda of NNU, a group with almost 185,000 members across the United States that describes itself as the largest union and professional association of registered nurses in the United States. The group launched a campaign dubbed "Don't Pipeline My Patients" last year, raising concerns about the transport and refining of oil sands, which it called a major threat to public health.

NNU also marched across the Golden Gate Bridge in 2013 to protest Keystone XL alongside 350.org, the Sierra Club, Friends of the Earth, Greenpeace and others.

The group has also been protesting oil trains in California and petroleum coke piles in Chicago in recent months, he said.

While Sanders had vocally opposed Keystone XL on grounds that it would accelerate climate change, Clinton in recent weeks has declined to take a position on the project, saying only that President Obama will decide its fate and she doesn't want to "second-guess" him (Greenwire, July 28).

Exactly when that decision will arrive is unclear. The Canadian Press reported this week that TransCanada Corp., the Canadian company behind Keystone XL, is working on a next move as the White House signals both privately and publicly a rejection of the project's permit (Greenwire, Aug. 10).

NATIONAL PARKS:

Water authority's sheep trespass into Great Basin

Published: Tuesday, August 11, 2015

Sheep belonging to the Southern Nevada Water Authority keep ending up inside Great Basin National Park, intensifying bad blood between park officials and the Las Vegas Valley's water supplier.

The two agencies have exchanged terse letters, and the water authority has never paid a \$375 fine for illegal grazing, according to records obtained via a Freedom of Information Act request.

Almost a decade ago, Nevada's largest municipal water agency spent \$79 million on 23,000 acres of private ranches, 900,000 acres of federal grazing rights, and more than 21 billion gallons of surface and groundwater rights in Spring Valley, just west of the national park in the Snake Mountains 300 miles northeast of Las Vegas.

Under state law, the water authority had to put its water rights to beneficial use; otherwise, it could lose them and a critical piece of a controversial plan to build a multibillion-dollar water pipeline. So the agency used the thousands of cows and sheep that came along with the ranch purchases to graze, including 700 on Bureau of Land Management property along the western and southern boundaries of Great Basin National Park.

Since 2009, the National Park Service has been calling on the authority to keep its sheep out of the park, as federal motion-sensing cameras have spotted sheep and the occasional shepherd inside the park.

The Park Service is concerned about forage impacts, but the chief concern is potential transmission of

disease to Great Basin National Park's wild bighorn sheep.

Zane Marshall, the authority's director of resources and facilities, said the edge of the park is hard to distinguish, with only a few signs scattered across "extremely rugged country."

"We're not running sheep into the park" on purpose, Marshall said. "We don't want them to cross the boundary. We only want to use the federal land we are permitted to use."

Park Superintendent Steve Mietz said the two entities are trying to work collaboratively, "instead of taking a more adversarial stance."

Marshall said the relationship has improved, but warned against unreasonable expectations.

"They're domestic sheep, but they're not pets," Marshall said. "When you have 500 to 700 of them, it's not uncommon for five or six or a dozen of them to take a walk" (Henry Brean, *Las Vegas Review-Journal*, Aug. 9). -- DTB

COASTAL EROSION:

Dam removal boosts beaches, too

Published: Tuesday, August 11, 2015

The removal of two dams on Washington state's Elwha River was done for the benefit of salmon and other fish, but new research has shown it has also improved the beaches at the river's mouth.

"We are seeing the rebuilding of an estuary and coast that were rapidly eroding prior to dam removal," said Jonathan Warrick, a scientist at the U.S. Geological Survey and the lead author of a paper on the research, one of five on the project published in a recent issue of the journal *Geomorphology*.

Millions of cubic yards of sediment had accumulated behind the dams, scientists estimated. Once they were removed, this sediment began moving toward the river's mouth.

In the first two years of the dam removal project, which began in 2011, Guy Gelfenbaum of USGS and his colleagues wrote, about 2.5 million cubic yards of sediment had accumulated in the river delta. As a result, the beaches there, long starved of sand, began growing. The delta expanded hundreds of yards into the strait and spread more than half a mile to the east.

"Walking on this new land form that extends hundreds of meters toward the sea and changes every day -- it's fantastic," Warrick said. "It blows your mind."

Advocating dam removal is popular among some environmental lawyers and legal scholars who have long argued that beaches have "sand rights," or rights to sand that would naturally flow to them if people and their infrastructure had not gotten in the way. Advocates of sand rights say anyone who interferes with the flow of sediment to and along the shoreline should be required to mitigate the effects (Cornelia Dean, *New York Times*, Aug. 10). -- BTP

TECHNOLOGY:

Startup slashes water use with 'misty' shower head

Published: Tuesday, August 11, 2015

As Californians strive to conserve water, a San Francisco startup launching today says it re-engineered shower heads to use up to 70 percent less water than normal ones.

A conventional shower head uses about 2.5 gallons of water per minute, according to U.S. EPA. The startup Nebia said its new shower head uses about three-fourths of a gallon per minute, according to Philip Winter, the company's CEO. The shower head uses technology borrowed from jet-fuel injection by breaking water into tiny particles to increase its surface area, making the shower more like a mist than a pounding of water.

"It's like walking into a humid environment that gets you super drenched," Winter said, insisting that the mist is powerful enough to handle elaborate shampoo and conditioner rituals.

Customers will be able to order a Nebia shower head for \$299 starting today, though the startup won't ship them until next spring.

"The end goal of Nebia is, 'Let's change people's habits,'" Winter said, acknowledging that even in a drought, "Showers are somewhere people don't want to change their habits" (Greta Kaul, *San Francisco Chronicle*, Aug. 11). -- BTP

WATER POLLUTION:

EPA admits to misjudging pressure before spill

Published: Tuesday, August 11, 2015

U.S. EPA said it miscalculated how much water pressure was hidden behind debris plugging the Gold King Mine entrance when it accidentally released 3 million gallons of waste into a tributary of the Animas River last week.

EPA on-scene coordinator Hayes Griswold said his team was trying to stick a pipe into the top of the mine in order to safely pump liquid out for treatment. But the effort dislodged too much debris, rupturing the mine's roof and spilling the water contaminated with lead, arsenic and other heavy metals.

"We were very careful," he said (Steve Garrison, [Farmington, N.M.] *Daily Times*, Aug. 10).

This week, EPA is warning farmers, towns and tribes to shut down their water intakes as the plume of contamination passes down stretches of the Animas and San Juan rivers flowing toward Lake Powell.

The agency said contaminants were flowing too fast to be an immediate health threat, and experts say the massive river system will dilute the waste before it can pose a long-term threat.

"The water appears worse aesthetically than it actually is, in terms of health," said Ron Cohen, civil and environmental engineering professor at the Colorado School of Mines.

Still, EPA has closed stretches of the river for drinking and recreation through Monday. The Navajo Nation has declared an emergency and stopped diverting water from the San Juan River.

EPA's warning has brought fear to farmers already suffering a hot, dry summer.

"By the weekend, without any rain, we'll be in trouble," said farmer D'rese Sutherland.

So far, wildlife has not been impacted by the spill, and a test batch of fingerling trout purposely exposed to the water survived over the weekend, officials said ([AP/Los Angeles Times](#), Aug. 10). -- **AW**

BRAZIL:

U.S. rowers get sick in Olympic waters

Published: Tuesday, August 11, 2015

Thirteen of 40 U.S. team members fell ill at the World Rowing Junior Championships, a test event that took place in the same waters where the Olympics will occur next year.

Rio de Janeiro has come under fire recently after viruses and bacteria were found at the site of next year's Olympic competitions.

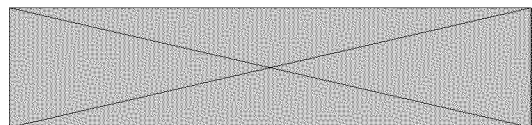
U.S. team physician Kathryn Ackerman said she believes the competitors, who suffered vomiting and diarrhea, could have been infected by the lake.

"I don't know if it was the water bottles in the boats, or hygiene precautions that some athletes are really good about and others weren't," she said, adding that "my personal feeling is, I think it's from the lake."

Coach Susan Francia, who was among four staff members who also got sick, said that while she couldn't conclusively place blame on the venue, "It just doesn't seem normal."

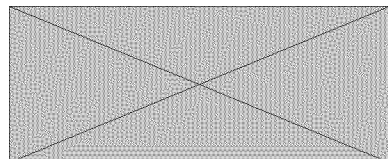
Members of other teams also fell ill, but not at the same rate as the Americans. Francia noted that though the U.S. team has added health precautions because of fears about tainted Rio waters, the American controls were not as strict as those of the other teams. For example, while the U.S. team bleached its oars after a race, it did allow water bottles for athletes in the boats during competitions. Other teams put water bottles in plastic bags in the boats or did not let athletes bring water bottles into the boats in order to reduce the risk of infection.

"Maybe we were not as strict in enforcing them as we should have been from the beginning," Francia said. She also advised teams coming to Brazil for the Olympics that "you should know when you're coming next year that you have to be smart about how you're preparing" (Stephen Wade, [Associated Press](#), Aug. 10). -- **AW**



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E&E's Power Plan Hub is updated



If you haven't checked it out, [E&E's updated Power Plan Hub](#) features revised state goal information, Clean Power Plan fact sheets and summaries of reactions from political leaders, state officials and industry interests. [Go to](#) E&E's Power Plan Hub.

CLIMATEWIRE — Wed., August 12, 2015



[READ FULL EDITION](#)

When U.S. EPA released its long-awaited final Clean Power Plan last week, it was immediately clear that states

1.REGULATION:

New math of the Clean Power Plan ratchets up anger and burdens of coal states

would face vastly different obligations than they had been preparing for under the 2014 draft rule.

2.EMPLOYMENT:

Another labor report, another bad month in oil-, gas-producing states

Employment in the mining industry, which includes oil, gas and coal extraction and support services -- subsectors particularly hard hit in the crude oil turndown -- slumped again in July, the seventh month in a row the group contracted, the Bureau of Labor Statistics reported last week.

TODAY'S STORIES

3.MARKETS:

EPA's McCarthy touts final Clean Power Plan's focus on emissions trading

4.CALIFORNIA:

How wildfires, climate change conspire to change plant communities

5.ADAPTATION:

Can the planet support 11B people? It depends on where you are

6.NATIONS:

Report says India needs new strategy to manage GHG emissions amid exploding growth

7.FORESTS:

Study breaks down industry contributions to wildfire emissions in Indonesia

8.SCIENCE:

Melting ice is a top concern for Antarctic researchers

9.BUSINESS:

Australia's largest planned coal mine is a 'stranded asset' -- report

10.FORESTS:

Alaska's wildfire season is now the 2nd-worst on record

11.WEATHER:

Heavy rain hits Utah after scorching early-summer temperatures

12.REGULATION:

Pa. weighs options to meet Clean Power Plan target

E&ETV'S ONPOINT

13.CLEAN POWER PLAN:

Bipartisan Policy's Grumet says McConnell strategy on EPA plan 'disappointing'

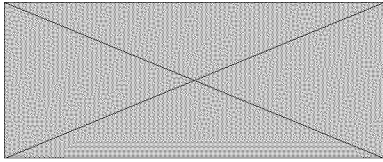


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ENERGYWIRE — Wed., August 12, 2015

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1.REGULATION:

Clean Power Plan ratchets up burdens on coal states

When U.S. EPA released its long-awaited final Clean Power Plan last week, it was immediately clear that states would face vastly different obligations than they had been preparing for under the 2014 draft rule. EPA Administrator Gina McCarthy told a Washington, D.C., audience yesterday that the uniform standards "guarantee equity and fairness across the board." States with more coal power than natural gas disagreed, seeing themselves on the losing end of the new calculations.

TOP STORIES

2.SECURITY:

Breaking critical infrastructure in a quest for solutions

3.PRODUCTION:

Iran + China = price drop, EIA warns

4.ELECTRICITY:

Texas competition beats average U.S. prices, but regulated areas have historical edge report

OIL AND GAS

5.TRANSPORT:

N.D. hires safety inspector in wake of fiery derailments

6.REGULATION:

N.D. moves toward accepting radioactive fracking waste

7.NATURAL GAS:

Conservative group goes to bat for Alaska LNG megaproject

8.MARCELLUS SHALE:

Ending drilling moratorium would disrupt Delaware River Basin -- study

9.BUSINESS:

Kinder Morgan expands shipping fleet in \$568M deal

10.LAW:

Former Texas politician joins Chesapeake lawsuit

11.GAS MARKETS:

Gazprom's China deal vulnerable to low oil prices

ELECTRICITY

12.PEOPLE:

Texas grid operator taps general counsel to be next CEO

13.ELECTRICITY:

Jumpy power supply hurts Polish manufacturers

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14.CLEAN POWER PLAN:

Bipartisan Policy's Grumet says McConnell strategy on EPA plan 'disappointing'



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